



United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge

Chief Immigration Judge

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MEMORANDUM TO: All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Support Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 97-9:
Motions for “Prima Facie” Determination and Verification
Requests for Battered Spouses and Children

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I. INTRODUCTION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) made significant changes in aliens’ eligibility for public assistance and benefits. Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended section 431 of the PRWORA by adding certain aliens who have been subjected to battery or extreme cruelty to the

definition of “qualified aliens” who are able to receive public benefits. Section 431 of the PRWORA has two basic criteria:

(1) The alien must have been battered or subjected to extreme cruelty by a spouse or a parent or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty and there is a substantial connection between the battery or cruelty and the need for the public benefits; and

(2) The alien has been approved for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (INA)(as in effect prior to April 1, 1997) or has a petition pending which sets forth a prima facie case for certain immigrant visa classifications or for suspension of deportation under section 244(a)(3) of the (INA)(as in effect prior to April 1, 1997) or section 240A(b)(2) of the INA.

The Immigration Court’s role in implementing section 501 of IIRIRA is limited to providing information, upon request, to benefit-providing agencies that an alien has or has not been granted suspension of deportation as a battered spouse or child and to making a determination whether an alien who has a pending application for suspension of deportation or cancellation of removal as a battered spouse or child has established a “prima-facie” case for relief. An alien may apply for public benefits if an Immigration Judge makes such a finding. This Operating Policy Procedure Memorandum (OPPM) concerns the procedures for handling a verification process to identify those aliens whose applications for suspension of deportation have been granted under section 244(a)(3) of the INA (as in effect prior to April 1, 1997) (hereafter referred to as section 244(a)(3)) and the procedures for handling a motion for prima facie determination for those aliens, who have a pending application for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA before an Immigration Judge. There will be a regulation issued which implements section 501 of IIRIRA. For questions concerning identification of battered spouses and children and limitations on public disclosure of information refer to OPPM 97-7: Procedures For Identifying Potential Battered Spouse/Battered Child Cases.

II. VERIFICATION OF APPROVED APPLICATIONS FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(3)

Presently, there are no procedures used that differentiate between grants of suspension of deportation under section 244(a)(3) and grants of suspension of deportation under sections 244(a)(1) and 244(a)(2) of the INA (as in effect prior to April 1, 1997). An alien, who has been granted suspension of deportation under section 244(a)(3) and is seeking public benefits, may require verification from the Immigration Court that his or her application was granted under section 244(a)(3). The verification process will not be necessary in the case of aliens who will be granted suspension of deportation or cancellation of removal as a battered spouse or child after the date of this OPPM. The order granting suspension of deportation or cancellation of removal will be modified to and/or the

Immigration Judge must specify whether the alien was granted relief under section 244(a)(3) or section 240A(b)(2) of the INA.

A. General

Under the verification process, a benefit-providing agency will either fax or mail a standardized verification request to the Immigration Court. See Attachment A.¹ The verification request must include a statement, signed by the alien, which waives the limitations on disclosure of information and any supporting documents for certain battered aliens. See section 384 of IIRIRA. Upon receipt of the verification request from the benefit-providing agency, the Court Administrator must ascertain, through the Automated Nationwide System for Immigration Review (ANSIR), whether the alien was granted suspension of deportation, determine whether the grant is administratively final and follow the procedures below.

B. Administratively Final Decisions on Applications for Suspension of Deportation

In any situation in which an Immigration Judge issued an administratively final order on an application for suspension of deportation, the following procedure applies. If the Court Administrator determines that the alien has an administratively final grant of suspension of deportation, he or she must immediately obtain the record of proceedings and forward it to the appropriate Immigration Judge. The appropriate Immigration Judge is the Judge who entered the decision; if that Judge is unavailable, the appropriate Judge is the Liaison Judge; if the Liaison Judge is unavailable, the ACIJ must be contacted. The Immigration Judge must then review the record of proceedings and determine whether the alien's application for suspension of deportation was approved under section 244(a)(3). The Immigration Judge will then sign an order which verifies whether the alien was granted suspension of deportation under section 244(a)(3). See Attachment B. This order may be faxed or mailed to the benefit-providing agency which initiated the request.

If the Board of Immigration Appeals issued the final order on an application for suspension of deportation, the Court Administrator must forward the verification request either by mail or fax to the Clerk of the Board of Immigration Appeals. The Court Administrator must notify the benefit-providing agency which initiated the request that he or she forward the verification request to the Board.

¹Section 5973(b) of the recently signed Balanced Budget Act of 1997 amended section 384 of IIRIRA to "authorize the Attorney General to disclose information to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Act of 1996." Responding to a verification request from a benefit-providing agency does not, therefore, require a signed waiver from the alien.

C. Pending Applications for Suspension of Deportation with the Board of Immigration Appeals

If the system indicates that an appeal of the Immigration Judge's decision on the application for suspension of deportation is pending before the Board of Immigration Appeals, the Court Administrator must forward the verification request either by mail or fax to the Clerk of the Board of Immigration Appeals. The Court Administrator must notify the benefit-providing agency which initiated the request that the verification request was forwarded to the Board.

III. MOTION FOR PRIMA FACIE DETERMINATION

Any alien, who has a pending application for suspension of deportation under section 244(a)(3) and seeks a determination that he or she is a "qualified" alien for purposes of receiving public benefits, may file a motion, in writing, under 8 C.F.R. § 3.23(a), with the Immigration Judge requesting a finding that he or she is "prima facie" eligible for suspension of deportation. An applicant for cancellation of removal under section 240A(b)(2) of the INA may also request a "prima facie" determination.

A. Required Documentation

In order to file a motion for prima facie determination, the alien must have filed or is filing concurrently a completed application for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA. The alien may attach to the written motion any additional statements or evidence concerning prima facie eligibility. In order for the alien to satisfy the good moral character criteria and the requirement that he or she not be deportable on criminal grounds, the alien must attach a signed statement, under penalty of perjury, stating whether he or she has been convicted of a crime and, if so, any details about the offense(s). The alien must also attach a certificate of service to the INS District Counsel.

B. Ruling on the Motion

The Immigration Judge will review the completed application for suspension of deportation or cancellation of removal, the motion, and the statement submitted by the alien. Because the goal of section 431 of the PRWORA is to allow battered spouses and children to leave the batterer's residence as soon as possible, a prompt decision on the motion is necessary. Upon filing of the motion, the Immigration Judge shall require the INS to respond within five business days. The Immigration Judge must rule on the motion within ten business days of receipt. The Immigration Judge will either grant or deny the motion in writing. See Attachment C.

C. Grant of the Motion

The finding of the Immigration Judge that the alien has a prima facie case for suspension of

deportation or cancellation of removal as a battered spouse or child will be valid until 30 days after the date of the merits hearing. See Attachment C. The Immigration Judge must specify that date on the line following the clause “This determination shall be valid to”. An Immigration Judge must not reset the merits hearing to a later date on his or her own initiative, if a prima facie determination has been made, unless he or she has consulted with his or her ACIJ. In the rare event the Immigration Judge subsequently resets the merits hearing to a later date, he or she must, sua sponte, issue another order finding prima facie eligibility and 30 days after the reset date will be the date the prima facie determination expires.

Following a merits hearing, if an Immigration Judge reserves decision, he or she must reevaluate whether the alien is prima facie eligible for suspension of deportation or cancellation of removal. If the Immigration Judge is satisfied that the alien has a prima facie case for suspension of deportation or cancellation of removal, he or she must issue another order finding prima facie eligibility, which will be valid for not more than 180 days. In the event either party appeals the Immigration Judge’s decision, jurisdiction over a motion for prima facie determination will then rest with the Board of Immigration Appeals.

Once an application for suspension of deportation or cancellation of removal has been granted and is administratively final, the alien may present the Immigration Judge’s or the Board’s order directly to the benefit-providing agency. It will no longer be necessary for the alien to request a prima facie determination.

D. Denial of the Motion

If the Immigration Judge denies the motion for prima facie determination and he or she reserves a decision on the application for suspension of deportation or cancellation of removal, the Immigration Judge may reconsider his or her decision on or after the date of the merits hearing.

IV. GRANTING AN APPLICATION FOR SUSPENSION OF DEPORTATION OR CANCELLATION OF REMOVAL

In the case of any grants of applications for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA issued on or after the date of this OPPM, the Immigration Judge’s order must note that the application was granted under section 244(a)(3) or section 240A(b)(2) of the INA. The system has been modified accordingly.

If there are any questions regarding these matters, please contact my Counsel, Michael Straus, at (703) 305-1716.

Michael J. Creppy
Chief Immigration Judge